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| 09/883,089   | 06/15/2001    | Todd A. Thompson     | 9345.17121-CON 1    | 1589             |
| 26308  | 7590          | 07/28/2008           | EXAMINER            |                  |
| RYAN KROMHOLZ & MANION, S.C.<br>POST OFFICE BOX 26618<br>MILWAUKEE, WI 53226 |               |                      | SMITH, RUTH S       |                  |
| ART UNIT   | PAPER NUMBER  |                      |                     |                  |
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/883,089

Filing Date: June 15, 2001

Appellant(s): THOMPSON ET AL.

Ryan Kromholz & Manion, S.C.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed February 4, 2008 appealing from the Office action mailed February 2, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

|           |              |        |
|-----------|--------------|--------|
| 6,432,070 | TALISH et al | 8-2002 |
|-----------|--------------|--------|

|           |                |         |
|-----------|----------------|---------|
| 6,126,619 | PETERSON et al | 10-2000 |
|-----------|----------------|---------|

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4,7-12,14,15 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Talish et al ('070) in view of Peterson et al. Talish et al disclose a

system for applying ultrasound to the thoracic cavity of a patient comprising a housing 14,16, an ultrasound transducer positioned within the ultrasound housing 16 and an assembly including straps 20 to stabilize placement of the housing on the chest of the patient. The assembly includes a quick release mechanism as seen at the end of straps 20 in figure 1 and a quick release material as seen by the VELCRO in figure 5. As seen in figure 1, the assembly can include a halter worn about the chest and shoulders. The strap assembly is substantially free of components affixed to the lateral side portion of the assembly. Assembly 22 as seen in figure 2 is for illustration purposes only. The function of the assembly is to position the transducers on the patient and to provide comfort in doing so. Talish et al fails to preclude one from making the device longer or shorter in the lateral direction. If the device were to be placed upon a very large patient, the chest of the patient, on the lateral side portions of the housing, would be substantially uncovered and bare. Furthermore, Talish et al disclose, in column 9, that various modifications can be made to the structural configuration of the placement module. Such modifications would have been an obvious design choice based upon many factors such as where the module is positioned and whether other testing is to be performed simultaneously therewith. The placement module includes components that are worn about the back that leave the chest on opposing sides of the housing uncovered which would allow placement of another treatment device on the chest. Talish et al fails to specifically disclose the operating parameters of the ultrasound energy or the use of a circulating fluid. Peterson et al is just one example of many which disclose the operating parameters of the therapeutic ultrasound as set forth in claim 1.

The application of ultrasound at the levels provided would inherently result in the increase of blood flow. It would have been obvious to one skilled in the art to have modified Talish et al such that the operating parameters are as taught by Peterson et al in that such are well known operating parameters for therapeutic ultrasound which will not cause harm to the patient. With respect to claim 4, in the absence of any showing of criticality, the specific arrangement of the assembly to provide stabilization of the housing would have been an obvious design choice of known functional equivalents in the art, particularly in view of Talish et al disclosing that various modifications can be made to the structural configuration of the placement module. With respect to claims 7-9, it is known to use a coupling agent to couple the ultrasound into the body without attenuation caused by it passing through air. It is well known to use circulating water as this agent as seen in Peterson et al. Therefore, it would have been obvious to one skilled in the art to have modified Talish et al such that the gel is replaced by circulating water as the coupling agent. Such a modification merely involves the substitution of one well known type of coupling agent for another. With respect to claims 10-12, Talish et al shows various arrangements for the housing which includes all of the limitations set forth.

#### **(10) Response to Argument**

With respect to Appellant's argument that Talish et al fails to teach a placement device which leaves the chest bare on lateral sides, it is respectfully submitted that in Talish et al (column 9, lines 25-27 ) disclose that various modifications can be made to the structural configuration of the placement module. Such modifications would have

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been an obvious design choice based upon many factors known in the art, such as where the module is positioned and whether other testing is to be performed simultaneously therewith.

With respect to Appellant's arguments that the placement support is custom made for each patient, Talish et al disclose that the placement support may be custom molded, however, this does not preclude one from using a previously constructed placement support on a new patient. One would only be prevented from using a large support on a much smaller person, however, the use of a smaller support on a large person would still allow the support to be comfortably placed on the patient and properly position the transducer on the patient while allowing one to conduct other procedures simultaneously with the treatment as is a well known expedient in the art..

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ruth S. Smith/

Primary Examiner, Art Unit 3737

Conferees:

/Angela D Sykes/

Supervisory Patent Examiner, Art Unit 3762

/Brian L Casler/

Supervisory Patent Examiner, Art Unit 3737